(2) No. 06-325

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

—♦—

IN RE LEONARD R. KAHN,

Petitioner.

v.

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS & INTERFERENCES

Respondent

On Petition for Writ of Mandamus to the United States Court of Appeals for the Federal Circuit

PETITION FOR REHEARING

LEONARD R. KAHN,
Appellant, pro se
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INTRODUCTION AND BACKGROUND

1. The instant Petition for a Writ of Mandamus was denied on October 30, 2006 and thus this Petition for Rehearing is timely.

ARGUMENT

2. THE INSTANT CASE IS FAMOUS AS IT VIOLATES "SETTLED LAW" WHICH IS KEY TO PATENT LAW

The Federal Circuit clearly violated in its decision, (A1- 33), the Administrative Procedure Act and this Court's teachings in *Dickson v. Zurko,* 527 U.S. 150 (1999) and the Federal Circuit's own decision, *In re Lee 277* F. 3d 1338 (Fed. Cir. 2002) in part by refusing to comply with Rule of Evid. 201(d) that makes it mandatory that a court take judicial notice if a party provides the necessary information and 201(f) that the notice can be taken at any stage of the proceedings. Clearly, the Federal Circuit erred in refusing. (31a), to allow the filing of an Amicus Brief by an expert on the blind, even though said Brief provides the necessary information that the instant invention satisfies a "long-felt but resolved need" to fully negate a finding of obviousness under 35 U.S.C. §103.

The importance of the Federal Circuit's interpretation of *Zurko* is underscored by University of Chicago Prof. Dennis Crouch, who stated, in his analysis of this specific case:

> "*In re Kahn... I already provided a summary of this... opinion, but decided that the meat of the opinion is important enough to be repeated...*"

Also, if this Writ is granted Kahn will be in a position to appeal the important split in the Circuits re the secret treatment of patent applications which has been Settled Law since the 1880's.

Thus, since this Honorable Court does not offer advisory opinions, denying the modest request of Ordering the Federal Circuit to follow the standard Rule of Evidence 201 can confuse the Congress which is now working on a major rewrite of the Patent Act.
(The Patent Reform Act of 2005 (H.R. 2795) was introduced by Congressman L. Smith (R-TX), a bill to dramatically amend Title 35 of the United States Code. The New York Intellectual Property Law Association, on May 3, 2006, issued a highly critical analysis of H.R. 2795 and the USPTO's Changes to Practice (71 Fed Reg 48) including a key issue of the instant case, i.e., Continuing Applications.)

This revision of the Patent Law will significantly damage America's ability to maintain our Research & Development

leadership, the major source of our commercial and military strength and will discourage inventors so that we will eschew the Patent System and instead rely on trade secrets.

Moreover, the Appellant here respectfully pleads that as a result of this Honorable Court's refusal to Order the Federal Circuit to follow the crystal clear Rule of Evidence 201 condones the Federal Circuit's violation of my Right to Petition the Government and my Right to Due Process as detailed in Question 2 of the subject Petition For a Writ of Mandamus:

> "Given the facts stated in question 1, did the Federal Circuit deny Kahn his Fifth Amendment Right to Due Process by refusing to follow Rule of Evidence 201 and did not the Court violate Kahn's first amendment constitutional right to petition his government as per *Lebron v. National Railroad Passenger Corporation,* 513 U.S. 374, 392 (1995) when it refused to consider the timely filed petitions to file an amicus brief?"

3. SENTENCING BLIND HUMAN BEINGS TO A LIFE OF FINANCIAL DEPENDENCE ON OTHERS (CHARITY)

The Court has the awesome duty to rule on capital cases and, of course, treats such cases with far more concern than normal cases. Accordingly, it apparently recognizes a need to temper justice with compassion. Thus, the Petitioner respectfully requests this Honorable Court to Order the

United States Court of Appeals for the Federal Circuit to consider the timely filed amicus brief of *Amicus Curiae,* Expert on the Blind, Mr. Robert F. Dall.
(As the Court will note, Pages 9 & 10 of the subject Petition, the use of my invention to help the blind is not subject to financial considerations:

> [I]*mportantly Kahn affirmed in his Petition for Rehearing En Banc... that he would not impose a royalty on any reading machines sold to any legally blind individuals who purchase them for his or her own use. And much more importantly, Kahn also reaffirms that he would not license manufacturers who do not agree to only manufacture reading machines that allow legally blind people to use them "out of the box" without any special additional hardware or software. People who are knowledgeable in the field of helping the blind, such as Amicus Curiae Dall, can confirm that even small add-on devices can greatly increase the final cost of the overall price of equipment for blind users.)*

4. CONCLUSION AND PRAYER

The Apellant respectfully requests this Honorable Court grant this Petition for a Rehearing and Order the Federal Circuit to follow Rule of Evid. 201.

Dated: November 6, 2006

Respectfully submitted,
Leonard R. Kahn
Appellant *pro se*

CERTIFICATE THAT THE INSTANT PETITION IS PRESENTED IN GOOD FAITH AND NOT SUBMITTED FOR DELAY

The Appellant affirms that the instant rehearing complies with, and is restricted to the grounds specified by Rule 44.2, and the Appellant also affirms that this Petition is presented in good faith and not submitted for purposes of delay.

Dated: November 6, 2006

Leonard R. Kahn
Appellant *pro se*